

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	8:09CR26
Plaintiff,)	
)	
V.)	ORDER
)	
MICHAEL A. PERKINS,)	
)	
Defendant.)	
_____)	

This matter is before the court on the defendant's amended motion to vacate under [28 U.S.C. § 2255](#). Filing No. [99](#) and Filing No. [103](#). Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b) (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a violation of [21 U.S.C. § 846](#) for conspiracy (crack cocaine). Filing No. 91 (text minute entry). The defendant was sentenced to 120 months of imprisonment. Filing No. [94](#). In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel due to counsel's failure to file a notice of appeal and other motions, explain the consequences of entering an open guilty plea or how the waiver affected his substantial guaranteed constitutional rights, and expose the lack of factual basis for the plea bargain. Filing No. [103](#).

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See [Rules Governing Section 2255 Proceedings for the United States District Courts](#), Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 and amended § 2255 motions within 21 days of the date of this order.
3. Defendant's motion to appoint counsel, Filing No. [100](#); motion for production of records and/or transcripts, Filing No. [102](#); motion for discovery, Filing No. [104](#); and motion for speedy adjudication, Filing No. [105](#) shall be held in abeyance until the United States answers the defendant's § 2255 motion.
4. Defendant's motion to amend, Filing No. [103](#), is granted *instanter*.

DATED this 21st day of June, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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